

[\*McNeice v. Northeast Nuclear Energy Co.\*, 95-ERA-18 \(ALJ June 27, 1996\)](#)

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UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES

Adam McNiece.  
Complainant.

v.

Northeast Nuclear Energy Company.  
Respondent.

Case No. 95-ERA-18  
95-ERA-47

and

Bartlett Nuclear. Inc.  
Respondent.

RECOMMENDED DECISION AND ORDER

On December 12, 1995. Judge Joel R. Williams issued a Recommended Decision and Order ("RD&O") in the the above referenced cases finding that Respondents had violated Section 211 of the Energy Reorganization Act of 1974. ("ERA"), 42 U.S.C. 5851 (Supp. IV 1992), as amended, in their treatment of Complainant, Mr. Adam McNiece, in two respects. First. Judge Williams found that Respondents had prematurely laid off Mr. McNiece on December 9, 1994 and that he otherwise would have "been retained in their employ from December 10, 1994 to December 23, 1994." RD&O at 19. Second. Judge Williams found that Mr. McNiece should have been hired for the Millstone Unit 3 outage which commenced in April 1995. Judge Williams concluded. therefore, that Complainant was entitled to the following damages: (1) "wages to which he would have been entitled if he had been retained in [Respondents] employ from December 10, 1994 to December 23, 1994" and (2) "earnings that [Mr. McNiece] would have earned as a SHP [Senior Health Physics Technician] during the Spring 1995 unit 3 outage based on the period when the majority of SHPs had reported to work for this outage and ending when the majority had been terminated." RD&O at 19. In addition, Judge Williams recommended that Respondents be ordered to pay

"for the Complainant's expenses in prosecuting his DOL complaints. including reasonable attorney fees." RD&O at 19.

Because of time constraints related to his impending retirement, Judge Williams made no specific recommendations in the RD&O regarding the actual dollar amount of back wages. costs. and attorney's fees. Instead Judge Williams stated that his order sets forth "the nature of the remedied [sic] which I believe should be awarded and leaves open the dollar amount for any further proceeding which may be necessary subsequent to the Secretary's review." RD&O at 19. For this reason. on February 21, 1996, the Secretary of Labor issued a Preliminary Order and Order of Remand to the Acting Chief Administrative Law Judge remanding this case for the limited purpose of having a supplemental recommended decision and order issued "regarding back pay, benefits and costs. including attorney fees." Secretary's Order at 2. This case was subsequently assigned to me to hold such further proceedings as might be necessary and to issue a recommended decision and order addressing the limited issues set forth in the Secretary of Labor's remand order.

A hearing in this case was scheduled for May 14, 1996. On May 9, 1996, the parties sought a continuance of the hearing because they believed that the matter would be settled. I granted the request for a continuance and ordered that the hearing be continued until July 9, 1996. Because the parties were unable to reach a settlement, on June 6, 1996, I held a telephonic pre-hearing conference to discuss with the parties the course of further proceedings. During the conference, the parties informed me that they had reached a Joint Stipulation with regard to the back pay, costs and attorney's fees to which Mr. McNiece is entitled assuming that the Secretary of Labor adopts Judge Williams' Recommended Decision and Order. In agreeing to the amounts set forth in the Joint stipulation, the parties reserve their right to challenge the underlying decision of Judge Williams before the Secretary of Labor and before the courts.

I have carefully reviewed the Joint Stipulation and conclude that it provides Mr. McNiece with the full amount of back pay. costs and expenses to which he is entitled and therefore I recommend entry of the following Order.

1. Respondents shall jointly pay the Complainant the amount of \$22,580.60 as back pay for the periods December 10, 1994 through December 23, 1994 and for the entire period of time of the Millstone Unit 3 outage which commenced in April 1995.

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[PAGE 3]

2. Respondents shall jointly pay the Complainant the attorney's fees he incurred in tile amount of \$8,370.00 and the costs he incurred in the amount of \$2,610.35. These attorney's fees and costs do not include any costs or attorney's fees which might be incurred after the date of this Recommended Decision and Order.

JUN 27 1996

Michael P. Lesniak  
Administrative Law Judge